

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL NO.
vs.	)	
	)	VIOLATION:
PNC ICLC Corp,	)	18 U.S.C. § 371
a Delaware Corporation,	)	
	)	(Conspiracy to Commit
Defendant.	)	Securities Fraud)

**DEFERRED PROSECUTION AGREEMENT**

Defendant PNC ICLC Corp. (“PNCICLC”), a Delaware Corporation, by its undersigned attorneys, pursuant to authority granted by its Board of Directors, and the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”), enter into this Deferred Prosecution Agreement (“Agreement”).

1. PNCICLC accepts and acknowledges that the United States will file a criminal complaint in the United States District Court for the Western District of Pennsylvania charging PNCICLC with conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371.

2. PNCICLC accepts and acknowledges responsibility for its behavior as set forth in the Statement of Facts attached hereto as Annex A and incorporated by reference herein by entering into this Agreement and by, among other things, the extensive remedial actions that it has taken to date, its continuing commitment of full cooperation with the Fraud Section and other governmental agencies, and its agreement to establish a restitution fund and the other undertakings it has made as set forth herein.

3. PNCICLC expressly agrees that it shall not, through its present or future attorneys, board of directors, agents, officers or employees, make any public statement contradicting any statement of fact contained in the Statement of Facts. Any such contradictory public statement by PNCICLC, its present or future attorneys, board of directors, agents, officers or employees, shall constitute a breach of this Agreement as governed by paragraph 12 of this Agreement, and PNCICLC would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to PNCICLC for the purpose of determining whether PNCICLC has breached this Agreement shall be at the sole discretion of the Fraud Section. Should the Fraud Section decide at its sole discretion to notify PNCICLC of a public statement by any such person that in whole or in part contradicts a statement of fact contained in the Statement of Facts, PNCICLC may avoid breach of this Agreement by publicly repudiating such statement within 48 hours after such notification. PNCICLC agrees that in the event that future criminal proceedings were to be brought in accordance with Paragraphs 12 and 14 of this Agreement PNCICLC will not contest the admissibility of the Statement of Facts in any such proceedings. Consistent with PNCICLC's obligations as set forth above, PNCICLC shall be permitted to raise defenses and/or assert affirmative claims in civil and regulatory proceedings relating to the matters set forth in the Statement of Facts.

4. During the term of this Agreement, PNCICLC agrees to cooperate fully with the Fraud Section, and with any other agency designated by the Fraud Section, regarding any matter about which PNCICLC has knowledge.

5. PNCICLC agrees that its cooperation, as agreed to in Paragraph 4 above, shall include, but is not limited to, the following:

(a) Completely and truthfully disclosing all information with respect to the activities of PNCICLC and its affiliates, and its present and former officers, agents, and employees, concerning all matters inquired into by the Fraud Section as may be requested by the Fraud Section;

(b) Assembling, organizing and providing on request from the Fraud Section, all documents, records, or other tangible evidence in PNCICLC's possession, custody, or control;

(c) Not asserting a claim of attorney-client or work-product privilege as to any documents, information, or testimony requested by the Fraud Section related to factual internal investigations or contemporaneous advice given to PNCICLC concerning the conduct at issue. In making production of any such documents, PNCICLC neither expressly nor implicitly waives its right to assert any privilege with respect to the produced documents or the subject matters thereof that is available under law against non-parties to this Agreement.

(d) Using its best efforts to make available its employees to provide information and/or testimony as requested by the Fraud Section, including sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities. Cooperation under this paragraph will include identification of witnesses who, to PNCICLC's knowledge, may have material information regarding the matters under investigation.

(e) Using its best efforts to make available for interviews, or for testimony, present or former PNCICLC officers, directors, and employees as requested by the Fraud Section.

(f) Providing testimony and other information deemed necessary by the Fraud Section or a court to identify or establish the original location, authenticity, or other evidentiary

foundation necessary to admit into evidence documents in any criminal or other proceeding as requested by the Fraud Section.

(g) Remaining a viable institution during the duration of this agreement.

6. PNCICLC shall continue to comply with any currently in force agreements between PNCICLC and the Securities and Exchange Commission or any other federal agency as long as any such agreements shall remain in effect; as any such agreements may be amended or modified or terminated from time to time by the respective parties to said agreements.

7. PNCICLC agrees to pay a total of \$90,000,000 dollars into a fund established for victim restitution, including for the settlement of any pending shareholder securities law litigation, payable within 30 days of execution of this Agreement. The payment of this money into the fund shall not constitute an adjudication of any individual claim asserted or to be asserted by any victim. The fund will be administered by a third party administrator selected by PNCICLC and acceptable to the Fraud Section, who shall, at six months intervals from the execution of this agreement, and at the conclusion of the distribution of the fund, provide to the Fraud Section and PNCICLC reports identifying the name and address of each recipient of a portion of the fund and the amount of the fund distributed to each recipient. None of the proceeds of the fund shall be payable as attorney's fees. All costs of administering the victim fund are to be borne by PNCICLC. To the extent that any money in the fund is not claimed by victims within four (4) years, the remaining amount shall revert to the United States Treasury.

8. PNCICLC agrees to pay a monetary penalty of \$25,000,000 dollars to the United States Treasury, payable within 10 days of execution of this Agreement.

9. In light of PNCICLC's exceptional remedial actions to date and its willingness to (i) acknowledge responsibility for its behavior; (ii) continue its cooperation with

the Fraud Section and other governmental regulatory agencies; (iii) demonstrate its future good conduct and full compliance with the securities laws and generally accepted accounting procedures; and (iv) consent to payment into a restitution fund and the assessment of the monetary penalty as set forth in paragraphs 7 and 8 above, the Fraud Section shall recommend to the Court that prosecution of PNCICLC on the criminal complaint filed pursuant to Paragraph 1 be deferred for a period of 12 months.

10. The Fraud Section agrees that if PNCICLC is in full compliance with all of its obligations under this Agreement, the Fraud Section, within thirty (30) days of the expiration of 12 months from the date of this Agreement, will seek dismissal with prejudice of the criminal complaint filed against PNCICLC pursuant to Paragraph 1 and this Agreement shall expire.

11. Should the Fraud Section determine during the term of this Agreement that PNCICLC has committed any federal crime commenced subsequent to the date of this Agreement, PNCICLC shall, in the sole discretion of the Fraud Section, thereafter be subject to prosecution for any federal crimes of which the Fraud Section has knowledge. Except in the event of a breach of this Agreement, it is the intention of the parties to this Agreement that all investigations relating to the matters set forth in the Statement of Facts that have been, or could have been, conducted by the Fraud Section prior to the date of this Agreement shall not be pursued further as to PNCICLC.

12. Should the Fraud Section determine that PNCICLC has committed a willful and knowingly material breach of any provision of this Agreement, the Fraud Section shall provide written notice to PNCICLC of the alleged breach and provide PNCICLC with a two-week period in which to make a presentation to the Assistant Attorney General in charge of the Criminal Division to demonstrate that no breach has occurred, or, to the extent applicable, that

the breach is not willful or knowingly material or has been cured. The parties hereto expressly understand and agree that should PNCICLC fail to make a presentation to the Assistant Attorney General in charge of the Criminal Division within a two-week period, it shall be conclusively presumed that PNCICLC is in willful and material breach of this Agreement. The parties further understand and agree that the Assistant Attorney General's exercise of discretion under this paragraph is not subject to review in any court or tribunal outside the Criminal Division of the Department of Justice. In the event of a breach of this Agreement that results in a prosecution of PNCICLC, such prosecution may be premised upon any information provided by or on behalf of PNCICLC to the Fraud Section at any time, unless otherwise agreed when the information was provided.

13. PNCICLC shall expressly waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Western District of Pennsylvania for the period that this Agreement is in effect.

14. In case of the willful and knowingly material breach of this Agreement, any prosecution of PNCICLC relating to the PAGIC transactions that are not time-barred by the applicable statute of limitations as of the date of this Agreement may be commenced against PNCICLC notwithstanding the expiration of any applicable statute of limitations during the deferred prosecution period and up to the determination of any such willful and knowingly material breach. PNCICLC's waiver of the statute of limitations is knowing and voluntary and in express reliance on the advice of counsel.

15. PNCICLC agrees that, if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to or into a single purchaser or group of affiliated purchasers during the term of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.

16. It is understood that this Agreement is binding on PNCICLC, the Fraud Section and the United States Attorneys Office for the Western District of Pennsylvania, but specifically does not bind any other federal agencies, or any state or local law enforcement or licensing authorities, although the Fraud Section will bring the cooperation of PNCICLC and its compliance with its other obligations under this Agreement to the attention of state and local law enforcement or licensing authorities, if requested by PNCICLC or its attorneys. This Agreement also excludes any natural persons.

17. PNCICLC and the Fraud Section agree that, upon filing of the criminal complaint in accordance with Paragraph 1, this Agreement shall be publicly filed in the United States District Court for the Western District of Pennsylvania.

18. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between PNCICLC and the Fraud Section. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Fraud Section, PNCICLC's attorneys, and a duly authorized representative of PNCICLC.

**On Behalf of the Government**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOSHUA R. HOCHBERG  
Acting United States Attorney  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice  
10<sup>th</sup> & Constitution Ave., NW  
Bond Building 4<sup>th</sup> Floor  
Washington, D.C. 20530

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOHN D. ARTERBERRY  
Deputy Chief, Fraud Section  
Criminal Division  
United States Department of Justice

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PAUL E. PELLETIER  
Special Counsel for Litigation, Fraud Section  
Criminal Division  
United States Department of Justice

\_\_\_\_\_  
DATE

\_\_\_\_\_  
MICHAEL K. ATKINSON  
Trial Attorney, Fraud Section  
Criminal Division

United States Department of Justice

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DATE

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CHRISTINE LEE  
Trial Attorney  
Antitrust Division  
United States Department of Justice

DIRECTOR'S CERTIFICATE

I have read this agreement and carefully reviewed every part of it with counsel for PNCIC, LC ("PNCICLC"). I understand the terms of this Agreement and voluntarily agree, on behalf of PNCICLC, to each of the terms. Before signing this Agreement, I consulted with the attorney for PNCICLC. The attorney fully advised me of PNCICLC's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of PNCICLC, in any way to enter into this Agreement. I am also satisfied with the attorney's representation in this matter. I certify that I am a director of PNC, and that I have been duly authorized by PNCICLC to execute this plea agreement on behalf of PNCICLC.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PNCIC, LC

CERTIFICATE OF COUNSEL

I am counsel for PNCIC, LC (“PNCICLC”). In connection with such representation, I have examined relevant PNCICLC documents, and have discussed this Agreement with the authorized representative of PNCICLC. Based on my review of the foregoing materials and discussions, I am of the opinion that:

1. [PNCICLC signee] is duly authorized to enter into this Agreement on behalf of PNCICLC.
2. This Agreement has been duly and validly authorized, executed and delivered on behalf of PNCICLC, and is a valid and binding obligation of PNCICLC.

Further, I have carefully reviewed every part of this Agreement with directors of PNCICLC. I have fully advised these directors of PNCICLC’s rights, of possible defenses, of the Sentencing Guidelines’ provisions, and of the consequences of entering into this Agreement. To my knowledge, PNCICLC’s decision to enter into this Agreement is an informed and voluntary one.

\_\_\_\_\_  
[Counsel]

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Counsel]

\_\_\_\_\_  
Date

Attorneys for Defendant

PNCIC, LC

CERTIFIED COPY OF RESOLUTION

Upon motion duly made by Director Mutterperl, seconded by Director Pfirman, and unanimously carried by the affirmative vote of all the Directors present, the following resolutions were adopted:

RESOLVED, that PNC ICLC Corp. ("PNCICLC"), which has been engaged in discussions with the United States Department of Justice in connection with the PAGIC transactions, consents to a resolution of such discussions and will, in the Western District of Pennsylvania, consent to the filing of a criminal complaint charging PNCICLC with conspiracy to violate the securities laws and enter into a deferred prosecution agreement; and

RESOLVED FURTHER, that Chairman and President William Mutterperl of this Corporation be, and hereby is, authorized to execute the Deferred Prosecution Agreement on behalf of the Corporation substantially in such form as reviewed by this Board of Directors at this meeting.

CERTIFICATION

I, \_\_\_\_\_, hereby certify that I am the duly elected Secretary of PNCIC, LC; that the foregoing is a full, true and correct copy of resolutions duly adopted by the Board of Directors of said Corporation, at a meeting thereof duly held at the office of the Corporation, in Pennsylvania, in the United States of America, and have not been rescinded or revoked; and that the foregoing resolutions are not contrary to any provisions in the Articles of Incorporation or By-Laws of PNCIC, LC.

IN WITNESS WHEREOF, I have hereunto signed my name as Secretary and affixed the Seal of said Corporation this \_\_\_\_\_ day of May, 2003.

\_\_\_\_\_  
Secretary

June 2, 2003

Paul E. Pelletier  
Special Counsel for Litigation  
United States Department of Justice  
Criminal Division, Fraud Section  
1400 New York Avenue, N.W.  
Washington, D.C. 20005

Re: The PNC Financial Services Group, Inc. and PNCICLC

Dear Mr. Pelletier:

The letter confirms the commitments made by The PNC Financial Services Group, Inc. ("PNC") to the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section") in the course of PNC's recent discussions with the Fraud Section relating to the various matters (the "Covered Subject Matters") addressed in the Order, dated July 18, 2002, of the Securities and Exchange Commission, instituting public administrative proceedings pursuant to Section 8A of the Securities Act Of 1933 and Section 21C of the Securities Exchange Act of 1934, making findings and imposing cease and desist order; and in the Written Agreement, dated July 12, 2002, between the Company and the Federal Reserve Bank of Cleveland and the related supervisory inquiries and examinations; and in the matters disclosed to the Fraud Section by PNC during the recent discussions.

PNC acknowledges that its commitment of continuing cooperation with the Fraud Section was one of several important factors that supported the decision of the Fraud Section to recommend that the prosecution of PNC ICLC Corp. ("PNCICLC") be deferred in accordance with the terms of the Deferred Prosecution Agreement (the "Deferred Prosecution Agreement") that is being entered as of even date herewith. Accordingly, PNC agrees to cooperate fully with the Fraud Section, and with any other agency designated by the Fraud Section, regarding any matters related to the Covered Subject Matters about which PNC has knowledge. PNC's agreement to cooperate shall extend until the completion of the Fraud Section's investigation of the PAGIC matters and any other matters disclosed to the Fraud Section by PNC, including any investigations or prosecutions of others. PNC understands that the Fraud Section's investigation into the Covered Subject Matters continues as to other companies and their involvement with PNC related entities, but not as to PNC and its affiliates, subject to the continued compliance by PNC and its affiliates with the commitments made and obligations undertaken to the Fraud Section hereunder and by PNCICLC with the commitments made and obligations undertaken to the Fraud Section under the Deferred Prosecution Agreement.

PNC's pledge of continuing cooperation with respect to the Covered Subject Matters as set forth above includes, but is not limited to, the following:

a) The full performance of PNC of its obligations under its agreements with the Securities and Exchange Commission or any other federal agency as long as any such

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agreements shall remain in effect; as any such agreements may be amended or modified or terminated from time to time by the respective parties to said agreements;

b) Completely and truthfully disclosing all information with respect to the activities of PNC and its affiliates, and their respective present and former officers, agents, and employees, concerning all matters inquired into by the Fraud Section as may be requested by the Fraud Section;

c) Assembling, organizing and providing on request from the Fraud Section, all documents, records, or other tangible evidence in PNC's possession, custody, or control, including providing access to such materials in their original form;

d) Not asserting a claim of attorney-client or work-product privilege as to any documents, information, or testimony requested by the Fraud Section related to factual internal investigations or contemporaneous advice given to PNC concerning the conduct at issue. In making production of any such documents, PNC neither expressly nor implicitly waives its right to assert any privilege with respect to the produced documents or the subject matters thereof that is available under law against parties other than PNC and its affiliated entities.

e) Using its best efforts to make available its employees to provide information and/or testimony as requested by the Fraud Section, including sworn testimony before a federal grand jury or in federal trials, as well as interviews with federal law enforcement authorities. Cooperation under this paragraph will include identification of witnesses who, to PNC's knowledge, may have material information regarding the matters under investigation.

f) Using its best efforts to make available for interviews, or for testimony, present or former officers, directors, and employees of any PNC affiliated entities as requested by the Fraud Section.

g) Providing testimony and other information deemed necessary by the Fraud Section or a court to identify or establish the original location, authenticity, or other evidentiary foundation necessary to admit into evidence documents in any criminal or other proceeding as requested by the Fraud Section.

PNC understands that if the Fraud Section determines that PNC has knowingly and willfully failed to comply with any provision of this commitment letter, or has committed any crime during the pendency of this commitment letter, the Fraud Section may, at its sole option, be released from its commitments under this commitment letter in its entirety by notifying PNC, through counsel or otherwise, in writing. The Fraud Section may also pursue all remedies available to it under the law, irrespective of whether it elects to be released from its commitments under this commitment letter. Should the Fraud Section determine that PNC has committed a willful and knowingly material breach of any provision of this Agreement, the Fraud Section shall provide written notice to PNC of the alleged breach and provide PNC with a two-week period in which to make a presentation to the Assistant Attorney General in charge of the Criminal Division to demonstrate that no breach has occurred, or, to the extent applicable, that the breach is not willful or knowingly material or has been cured. The parties hereto expressly understand and agree that should PNC fail to make a presentation to the Assistant Attorney General in charge of the Criminal Division within a two-week period, it shall be conclusively presumed that PNC is in willful and material breach of this Agreement. The parties further understand and agree that the Assistant Attorney General's exercise of discretion under this paragraph is not subject to review in any court or tribunal outside the Criminal Division of the Department of Justice.

PNC understands that should any such breach of this commitment letter occur, the

Fraud Section will have the right to use against PNC before any grand jury, at any trial, hearing or for sentencing purposes, any statements made by PNC's employees and agents, and any information, materials, documents or objects provided by PNC to the Fraud Section pursuant to this letter without any limitation. PNC agrees that in the event that future criminal proceedings were to be brought, PNC will not contest in any such proceedings the admissibility of the Statement of Facts incorporated by reference into the Deferred Prosecution Agreement. In this regard, PNC hereby waives any defense to any charges that it might otherwise have under any statute of limitations or the Speedy Trial Act, except to the extent such defenses existed as of the date of this letter.

This commitment letter is addressed to the United States Department of Justice, Criminal Division, Fraud Section and covers PNC and any of its successors, subsidiaries, divisions, or affiliates. This commitment letter also excludes any natural persons. PNC and PNCICLC have pledged their full and continuing cooperation with the Fraud Section under this commitment letter and the Deferred Prosecution Agreement, respectively.

I understand the terms of this letter commitment and voluntarily agree, on behalf of PNC, to each of the terms. Before signing this letter commitment, I consulted with counsel for PNC. Counsel fully advised me of PNC's rights, of possible defenses, and of the consequences of entering into this letter commitment. No promises or inducements have been made other than those contained in this letter commitment. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this letter commitment on behalf of PNC, in any way to enter into this letter commitment. I am also satisfied with counsel's representation in this matter. I certify that I am an officer of PNC, and that I have been duly authorized by PNC to execute this Agreement on its behalf.

Truly yours,

The PNC Financial Services Group, Inc.

By:

\_\_\_\_\_  
William Mutterperl

# United States District Court

WESTERN

DISTRICT OF

PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

V.

CASE NUMBER:

PNC ICLC CORP.

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. In or around May 2001 and continuing thereafter until on or about January 29, 2002 in Allegheny county, in the Western District of Pennsylvania defendant(s) did, ingly, intentionally and unlawfully conspire, with others known and unknown, to violate the Federal securities laws, that is, Title 15 United States Code, Sections 78j and, 78ff(a), Title 17, Code of Federal Regulations, Section 240.10b-5, all in violation of Title 18, United States Code, Section 371.

I further state that I am a Special Agent of the FBI Official Title and that this complaint is based on the following

facts:

See attached Affidavit and incorporated Appendix.

Continued on the attached sheet and made a part hereof:  Yes  No

\_\_\_\_\_  
Signature of Complainant

Sworn to before me and subscribed in my presence,

\_\_\_\_\_  
Date

at Pittsburgh, Pennsylvania

\_\_\_\_\_  
City and State

AMY REYNOLDS HAY, U.S. Magistrate Judge

\_\_\_\_\_  
Name and Title of Judicial Officer

\_\_\_\_\_  
Signature of Judicial Officer

APPENDIX A

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL NO.
vs.	)	
	)	VIOLATION:
PNC ICLC Corp.,	)	18 U.S.C. § 371
a Delaware Corporation	)	
	)	(Conspiracy to Commit
Defendant.	)	Securities Fraud)

STATEMENT OF FACTS

1. Defendant PNC ICLC Corp. (hereinafter "PNCICLC"), is a wholly owned indirect subsidiary of THE PNC FINANCIAL SERVICES GROUP, INC. (hereinafter "PNC"). PNC is a bank holding company and is the holding company for PNC Bank, National Association ("PNC Bank") and other bank and nonbank subsidiaries. PNC operates community banking, corporate banking, real estate finance, asset-based lending, wealth management, asset management and global fund services businesses. PNC's primary geographic markets are in Pennsylvania, New Jersey, Delaware, Ohio and Kentucky. Certain of PNC's securities are registered with the United States Securities and Exchange Commission ("SEC") pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. Federal banking and securities laws and regulations required PNC to provide periodic regulatory and financial reports concerning its operations and conditions.

2. Prior to and throughout 2001, PNC and PNCICLC reviewed various strategies to manage the volatility and improve the quality of the assets on PNC's balance sheet. During 2001, in furtherance of this strategy, PNC and PNCICLC entered into three transactions (each a "PAGIC transaction") involving a total of \$762 million in assets for the purpose of transferring certain loans and venture capital assets from PNC's balance sheet to other entities (each a "PAGIC entity"). PNC engaged in the PAGIC transactions through PNCICLC, which was the owner of PNC's interests in each of the PAGIC entities. The PAGIC entities were specifically created by PNCICLC for the purpose of the PAGIC transactions and were intended to be treated by PNC and PNCICLC as off-balance sheet "special purpose entities" or "SPEs" under applicable accounting principles commonly referred to as "Generally Accepted Accounting Principles" or "GAAP." PNC's ability under GAAP to account for the PAGIC entities as off-balance sheet SPEs, *i.e.*, as if PNC no longer owned the assets transferred to those entities, depended upon whether or not the transactions complied with the GAAP requirements for nonconsolidation. At the time PNCICLC entered into the PAGIC transactions, there were three main GAAP requirements for nonconsolidation and sales recognition by the sponsor or transferor to be appropriate: (1) the majority owner of the SPE must be an independent third party who has made a substantive capital investment in the SPE, (2) the independent third party must have control of the SPE, and (3) the majority owner must have substantive risks and rewards of ownership of the SPE.

3. Each PAGIC transaction violated the GAAP requirements for nonconsolidation of SPEs. Therefore, PNC's second and third quarter 2001 regulatory reports and financial statements did not conform with GAAP for such off-balance sheet treatment. PNC improperly treated the transfers of assets to the PAGIC entities as sales qualifying for nonconsolidation, when it should have included the assets of the PAGIC entities in PNC's

regulatory reports and financial statements, i.e., consolidated those assets into those statements and reports. This failure to consolidate, combined with the requirement that the PAGIC assets be characterized as “held for sale” assets when consolidated on PNC’s balance sheet, resulted, among other things, in (a) a material overstatement of PNC’s earnings per share for the third quarter of 2001 by 21.4%, (b) a material understatement of PNC’s fourth quarter 2001 loss per share of 25% in a January 3, 2002 and January 17, 2002 press release, (c) a material overstatement of 2001 earnings per share by 52% in a January 17, 2002 press release, (d) material understatements of the amounts of PNC’s nonperforming loans and nonperforming assets, and (e) material overstatements of the amounts of reductions in loans held for sale and overstatements in the amounts of securities available for sale.

4. The PAGIC structure was designed and marketed by a large insurance company (the “Insurance Company”) and a national accounting firm (the “National Accounting Firm”) as an allegedly innovative structure for permitting off-balance sheet treatment of troubled assets. It was originally designed by such firms in this context to change the character of a pool of assets as reflected on a company’s books from loans to securities and to permit changes in the valuation of those assets (either mark-to-market valuations, impairments or additional reserves) to be reflected as an adjustment to equity in the balance sheet (a “below-the-line” adjustment). This would have the effect of reducing earnings volatility because the changes period-to-period in valuation of the underlying assets would not flow through to the company’s income statement. The National Accounting Firm also served as both PNC’s external and internal auditor during the period in which the three PAGIC transactions were entered into.

5. Each PAGIC transaction involved the creation of two limited liability companies, one of which sold a substantial ownership interest (97%) to PNCICLC and the remaining interest (3%) to a subsidiary of the Insurance Company. With funds received in

exchange for its shares, each PAGIC entity purchased loans or venture capital assets from PNC; some assets were acquired directly in exchange for shares. Many of the loans and assets transferred by PNCICLC to the SPEs were volatile, troubled, or nonperforming.

6. In each of the second, third and fourth quarters of 2001, PNCICLC entered into a PAGIC transaction. The first PAGIC transaction ("PAGIC I") closed on June 28, 2001 (two days before the end of PNC's second quarter). The second PAGIC transaction ("PAGIC II") closed on September 27, 2001 (three days before the end of PNC's third quarter). The third PAGIC transaction ("PAGIC III") closed on November 30, 2001. The PAGIC III transaction was entered into by PNC Venture Corp. ("PNC Venture"), a separate indirect wholly owned subsidiary of PNC. PNCICLC subsequently acquired from PNC Venture all of the assets and related liabilities (including with respect to any conduct of PNC Venture in connection with the PAGIC III transaction) associated with the PAGIC III transaction. All references to PNCICLC herein include reference to PNCICLC as the successor in interest to PNC Venture with respect to its conduct in connection with the PAGIC III transaction. In its original regulatory and financial reports filed with the Federal Reserve Board and the SEC, respectively, for the second and third quarters of 2001, PNC treated the PAGIC entities as valid SPEs and applied the accounting treatment that the National Accounting Firm had indicated would be applicable to valid SPEs - *i.e.*, a de-consolidation and reclassification of the underlying PAGIC assets.

7. On January 29, 2002, PNC issued a press release announcing revisions to second and third quarter 2001 financial statements to reflect consolidation of the PAGIC transactions, with the underlying assets being treated as "held for sale" in the consolidation. The press release disclosed that consolidation would reduce 2001 net income by \$155 million, equivalent to an overstatement of earnings per share by 38%, from \$1.91 per share to \$1.38 per share. The press release also disclosed that nonperforming assets would increase by

approximately \$125 million to approximately \$393 million. The price of PNC's shares dropped 9.4% that day from \$61.87 per share to \$56.08 per share.

**Payment of a de facto Structuring Fee or Balance Sheet Rental Fee Meant the PAGIC Transactions had to be Consolidated on PNC's Financial Statements and Regulatory Reports.**

8. The PAGIC transactions failed to satisfy GAAP's requirement for non-consolidation of SPEs that the independent third party, i.e., the Insurance Company, make and retain a substantive capital investment in the SPEs and, therefore, the SPEs should have been consolidated on PNC's financial statements and regulatory reports. At the time of the PAGIC transactions, three percent was the minimally acceptable level under GAAP to indicate a substantive capital investment sufficient for nonconsolidation, though a greater investment may be necessary depending on the facts and circumstances. The payment of a "structuring" fee or any other payments such as a "balance sheet rental" fee that reflected an implicit return of capital to the Insurance Company would need to be netted against the capital investment that was being made by the Insurance Company in the PAGIC entities. Because each PAGIC structure involved only a minimum 3% investment by the Insurance Company, any such fees or payments required consolidation of the SPEs under GAAP on PNC's financial statements and regulatory reports.

9. PNCICLC and the Insurance Company agreed to have the SPEs pay fees to the Insurance Company, characterizing those fees as "management fees," while PNCICLC knew that the "management fees" included compensation related to matters beyond the management services to be provided to the PAGIC entities by the Insurance Company. PNCICLC knew that this de facto "structuring fee" or "balance sheet rental fee" reduced the Insurance Company's capital investment below the minimally acceptable level under GAAP needed to qualify as a substantive capital investment for nonconsolidation. PNCICLC understood that what was

characterized as “management fees” included payments to the Insurance Company to compensate the Insurance Company for, among other things, the costs and burdens associated with the consolidation of assets on the Insurance Company’s balance sheet.

10. To obtain the off-balance-sheet treatment of the PAGIC entities, PNCICLC and the Insurance Company did not disclose the existence of a de facto structuring fee or a balance sheet rental fee, and executed documents in each of the PAGIC transactions that characterized the fees as “management fees.”

**PNC’s Retention of the Substantive Risks and Rewards of Ownership of the SPEs Meant the PAGIC Transactions had to be Consolidated on PNC’s Financial Statements and Regulatory Reports.**

11. The PAGIC transactions also did not comply with another GAAP requirement for nonconsolidation, namely that the Insurance Company, as the majority owner of the SPEs, have the substantive risks and rewards of ownership in the SPEs. Therefore, the SPEs should have been consolidated on PNC’s financial statements and regulatory reports. Before entering into the PAGIC transactions, both the Insurance Company and PNCICLC knew that the Insurance Company, as the majority owner of the SPE, must have substantive risks and rewards of ownership of the assets of the SPEs. PNCICLC and the Insurance Company, however, knew that the PAGIC structures included financial terms that in substance resulted in PNC retaining substantive risk and rewards of changes in the underlying values of the assets held by the PAGIC entities.

12. PNCICLC contacted a New York law firm (the “New York Law Firm”) regarding the issuance of a “true sale” opinion for the first PAGIC transaction, but after this firm expressed initial concerns about the firm’s ability to deliver a “true sale” opinion PNCICLC replaced the New York Law Firm as the requested author with a Pittsburgh law firm (the “Pittsburgh Law Firm”).

13. In PAGIC III, PNCICLC engaged a Washington, D.C. law firm (the “Washington, D.C. Law Firm”) to help structure the transaction as well as initially to provide a “true sale” opinion for the transaction. The Washington, D.C. law firm noted in a memorandum that a main objective of the transaction was to assure that PNC derived the greatest portion of the economic value of the deal and the Insurance Company’s participation was primarily fee, not equity, driven. The Pittsburgh Law Firm ultimately was retained to provide and did provide the true sale opinion for PAGIC III.

14. PNCICLC knew that PNC, rather than the Insurance Company, retained the substantial risks and rewards of ownership of the contributed assets. In particular, PNCICLC knew that the Insurance Company had no substantive exposure to declines in the values of the PAGIC entities because the Insurance Company’s investments in those entities were tied substantively to the performance of highly-rated debt obligations or demand deposits and time deposits with maturities of one month or less. PNCICLC also knew that PNC, rather than the Insurance Company, would retain substantially all of the economic upside of its investment in the assets transferred into the SPE by PNC through PNC’s right to convert its preferred interests into common stock.

15. Further, PNCICLC knew the so-called “management fees” effectively guaranteed the Insurance Company against a risk of loss of principal in the SPEs because the Insurance Company would receive fees in less than five years of closing the PAGIC transactions that exceeded the Insurance Company’s capital investment.

#### **Regulatory Matters.**

16. The PAGIC transactions were reviewed by the Federal Reserve Bank of Cleveland and the Federal Reserve Board (the “Federal Reserve”) as part of the Federal Reserve’s regulatory oversight of PNC. The PAGIC transactions were also reviewed by the Office of the

Comptroller of the Currency (“OCC”) to evaluate the impact to the bank as part of the OCC’s regulatory oversight of PNC’s principal subsidiary, PNC Bank. As part of those agencies’ review of the PAGIC transactions, PNC submitted closing binders on the PAGIC transactions to the Federal Reserve and the OCC. Included in those closing binders were guidance letters obtained from the National Accounting Firm opining that non-consolidation of the PAGIC entities was appropriate under GAAP.

17. In PAGIC I, which closed on June 28, 2001, the National Accounting Firm dated its guidance letter as June 21, 2001. Although PNC had a draft of the guidance letter from the National Accounting Firm before PAGIC I closed, PNC did not obtain a final, signed guidance letter from the National Accounting Firm until on or around July 18, 2001. PNC submitted closing binders on PAGIC I to the Federal Reserve and the OCC on or around September 7, 2001 and September 14, 2001, respectively. PNC and the National Accounting Firm did not disclose to the Federal Reserve or the OCC that the guidance letter for PAGIC I had been back-dated to reflect a date prior to the closing of that transaction.

18. In PAGIC II, which closed on September 27, 2001, the National Accounting Firm back-dated its guidance letter to September 21, 2001. PNC did not obtain a first draft of the guidance letter for PAGIC II from the National Accounting Firm until several months after the closing of PAGIC II.

19. In PAGIC III, which closed on November 30, 2001, the National Accounting Firm back-dated its guidance letter to November 29, 2001. The National Accounting Firm did not finalize the guidance letter on PAGIC III until on or around December 12, 2001.

20. On October 23, 2001, the Federal Reserve sent a letter to PNC expressing concern about the accounting treatment of the PAGIC I and PAGIC II transactions and requesting additional information from PNC on those transactions. On October 24, 2001, Examiners of the

Federal Reserve met with PNC to discuss third quarter financial results and regulatory matters. At that meeting, PNC committed to the Federal Reserve to discuss the issues raised in the October 23, 2001 letter before completing any additional PAGIC transactions. PNC, however, subsequently failed to properly inform the Federal Reserve as to the status of a potential third PAGIC transaction. PNC decided in mid-November 2001 to accelerate the closing of PAGIC III from December 31, 2001 to November 30, 2001. PNC did not provide the Federal Reserve with prior or contemporaneous notice of the closing of PAGIC III, and did not inform the Federal Reserve until December 4, 2001 that PAGIC III had closed.

21. In its October 23, 2001 letter, the Federal Reserve requested that PNC “[p]rovide relevant cites in GAAP and other information (e.g., opinion letter from external accountants, etc.) that are available to support PNC’s proposed accounting treatment.” Drafts of PNC’s proposed responses included references to the fact that PNC had not yet obtained guidance letters from the National Accounting Firm for PAGIC II and PAGIC III. The final version of PNC’s response, however, stated only that the National Accounting Firm’s opinion on PAGIC II and PAGIC III was consistent with its opinion letter issued in connection with PAGIC I.

22. After submitting its written response to the Federal Reserve’s October 23, 2001 letter, PNC submitted closing binders to the Federal Reserve for both the PAGIC II and PAGIC III transactions, including the back-dated guidance letters from the National Accounting Firm for those transactions. PNC had previously provided a copy of the Federal Reserve’s October 23, 2001 letter to the National Accounting Firm and the National Accounting Firm actively participated in the review of PNC’s response to the letter. The National Accounting Firm knew PNC intended to submit the guidance letters on the PAGIC transactions to the Federal Reserve as part of the Federal Reserve’s investigation into the appropriate accounting treatment

for the PAGIC transactions. Neither PNC nor the National Accounting Firm informed the Federal Reserve that the guidance letters for PAGIC II and III had been back-dated.

**PNC's January 17, 2002 Press Release**

23. On January 3, 2002, PNC pre-released its earnings for the fourth quarter of 2001. In that press release, PNC announced that it had completed the strategic repositioning of its banking businesses that it had begun in 1998. The amount of nonperforming loans announced by PNC on January 3, 2002 did not include \$172 million in nonperforming loans transferred into the PAGIC entities. PNC also announced on January 3, 2002 that it would release on January 17, 2002 its earnings for the fourth quarter and full-year 2001.

24. On January 11, 2002, in order to provide PNC with sufficient time to consolidate the PAGIC transactions on to PNC's financial statements before PNC's scheduled earnings release on January 17, 2002, the Federal Reserve informed PNC that the Federal Reserve had reached the conclusion that PNC's accounting treatment for the PAGIC transactions was incorrect under GAAP and that PNC must consolidate the PAGIC transactions in its regulatory reports for the second, third, and fourth quarters of 2001. The Federal Reserve also informed PNC that the Federal Reserve had discussed its decision to require consolidation with the SEC, including the SEC's Office of Chief Accountant.

25. On January 13, 2002, the National Accounting Firm recommended to PNC that PNC delay issuance of its earnings release scheduled for January 17, 2002 until PNC had an opportunity to assess fully the impact of consolidation on PNC's financial reports and to address the appropriate accounting treatment for the PAGIC transactions with the SEC's Office of Chief Accountant.

26. On January 15, 2002, in a meeting between representatives of the Federal Reserve and PNC, the Federal Reserve informed PNC, again, that PNC's accounting treatment

for the PAGIC transactions was incorrect under GAAP and that PNC should consolidate the PAGIC transactions for financial reporting purposes. The Federal Reserve informed PNC that, consistent with federal banking laws, both regulatory accounting principles (“RAP”) and GAAP required consolidation of the PAGIC entities.

27. On January 17, 2002, PNC issued a press release announcing its results for the fourth quarter and year-end 2001. Notwithstanding the advice from the National Accounting Firm to delay the release, PNC did not consolidate the PAGIC transactions on its financial statements as reported in its press release issued on January 17, 2002. Instead, PNC stated earnings per share for 2001 were \$1.91, and that its fourth quarter loss would be (\$1.15) per share. PNC announced it had reduced its institutional loan portfolio through, among other things, “sales of institutional loans to subsidiaries of a third party financial institution.” PNC announced that “venture capital assets were reduced to \$424 million through a sale to a subsidiary of the same institution.” The press release presented a table setting forth PNC’s nonperforming assets by type, including \$268 million in nonperforming assets as of December 31, 2001. In a footnote, PNC stated that “excluded from the above table and reflected below are . . . certain assets sold to subsidiaries of a third party financial institution. These assets will be included in nonperforming assets in PNC’s bank holding company regulatory filings.” None of the additional disclosures contained in the footnote or elsewhere in the release relating to the regulatory filings received any reported market or analyst attention in the period following the release and prior to the January 29, 2002 press release.

28. PNC’s January 17, 2002 press release did not disclose that the financial information it set forth did not comply with GAAP, i.e., nonconsolidation and off-balance sheet treatment of the PAGIC transactions was inappropriate under GAAP because the Insurance

Company did not maintain the minimum required capital investment in the SPEs, and did not share in the substantive risks and rewards of those SPEs.

29. The January 17, 2002 press release also implied that PNC could effectively obtain off-balance sheet treatment of nonperforming assets for financial reporting purposes (GAAP), but could not obtain off-balance sheet treatment of those assets for regulatory reporting purposes (RAP). In fact, PNC knew there was no distinction between RAP and GAAP. As a result, the January 17, 2002 press release did not disclose that \$172 million worth of troubled assets would have to be incorporated back onto PNC's balance sheet upon consolidation. The release also failed to acknowledge that the Federal Reserve had identified accounting defects in the PAGIC transactions.

30. The release also did not disclose that consolidation of the SPEs as required by GAAP might result in a material charge to PNC's year-end earnings for 2001. As of January 17, 2002, PNC hoped to convince the SEC, in essence, to overrule the Federal Reserve on the appropriate accounting treatment for the PAGIC transactions and PNC had asked that the National Accounting Firm set up a meeting among PNC, the National Accounting Firm and the SEC's Office of Chief Accountant to discuss the accounting treatment. PNC also held what turned out to be an incorrect view of the likely impact of consolidation (namely, that the PAGIC assets would come back on PNC's books as portfolio assets rather than in a "held for sale" category, which would not have a material impact on PNC's financial statements). PNC, however, knew before it issued the January 17, 2002 press release that consolidation of the PAGIC entities on PNC's financial statements could potentially result in a material charge to PNC's year-end earnings for 2001 if the PAGIC assets came back on PNC's books in a "held for sale" category.

31. There are other matters known to the parties that are not included in this Statement of Facts.



# Department of Justice

**FOR IMMEDIATE RELEASE**  
**MONDAY, JUNE 2, 2003**  
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**TDD (202) 514-1888**

## **PNC ICLC CORP. ENTERS INTO DEFERRED PROSECUTION AGREEMENT** **WITH THE UNITED STATES**

**WASHINGTON, D.C.** - Deputy Attorney General Larry Thompson, Assistant Attorney General Michael Chertoff of the Criminal Division and FBI Director Robert Mueller - all members of the President's Corporate Fraud Task Force - announced today that PNC ICLC Corp., a subsidiary of the PNC Financial Services Group, Inc., of Pittsburgh, Pennsylvania, will pay \$90 million to a restitution fund and \$25 million in penalties to the United States as part of a deferred prosecution agreement on criminal charges of conspiracy to violate securities laws.

A criminal complaint filed today at U.S. District Court for the Western District of Pennsylvania charges PNCICLC with conspiracy to violate federal securities laws, a violation of 18 USC Section 371, by fraudulently transferring \$762 million in mostly troubled loans and venture capital investments from PNCICLC to certain off-balance sheet entities, known as the PAGIC entities. In a separate agreement with the government, PNC - the seventh largest bank holding company in the United States - has pledged its complete cooperation with a continuing investigation into the PAGIC transactions entered into by PNCICLC in 2001.

In light of PNC's remedial actions, its willingness to acknowledge responsibility for its wrongdoing, and its continuing cooperation in the criminal investigation of this matter, the U.S. government has agreed to defer prosecution on the criminal complaint for 12 months, and eventually dismiss the complaint if PNCICLC and PNC fully comply with the obligations set forth in the deferred prosecution agreement and the agreement on cooperation.

"The continued cooperation of corporate wrongdoers is an essential part of 'real time' fraud enforcement," said Deputy Attorney General Larry Thompson, the head of President Bush's Corporate Fraud Task Force. "This agreement strikes a balance between our commitments to rooting out corporate corruption and securing the assistance we need to conduct swift and thorough investigations."

"The goals of the Department of Justice are met with today's agreement," said Assistant Attorney General Michael Chertoff. "We are sending the message that securities fraud is criminal conduct, while at the same time recognizing cooperation and internal reform by corporations."

"The deferred prosecution agreement announced today will help heal the damage inflicted on investors, and we hope it will dissuade others from engaging in similar violations," said FBI Director Robert Mueller. "The efforts of the investigators in our Pittsburgh field office and our Financial

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Institution Fraud Unit at headquarters show that the Bureau remains committed to uncovering securities frauds that hurt investors and damage the economy. The FBI remains committed to working closely with our SEC partners, whose cooperation was invaluable to this investigation.”

The charges and the deferred prosecution agreement filed today arose from the transfer by PNCICLC, in the last three quarters of 2001, of \$762 million in mostly troubled loans and venture capital investments from PNCICLC to certain off-balance sheet entities. According to the criminal complaint, PNCICLC intended the entities receiving these assets to be regarded as Special Purpose Entities, or SPEs, under generally accepted accounting principles (“GAAP”).

At the time PNCICLC entered into the PAGIC transactions, there were three main GAAP requirements for nonconsolidation and sales recognition by the sponsor or transferor to be appropriate: (1) the majority owner of the SPE must be an independent third party who has made a substantive capital investment in the SPE, (2) the independent third party must have control of the SPE, and (3) the majority owner must have substantive risks and rewards of ownership of the SPE. PNCICLC knew the PAGIC transactions violated the GAAP requirements for non-consolidation of SPEs because the majority owner of the SPE did not make or maintain a substantive capital investment in the SPE and did not have the substantive risks and rewards of ownership of the SPE.

According to the complaint, PNC’s failure to properly consolidate those SPEs onto PNC’s balance sheet, combined with the requirement that the SPEs’ assets be characterized as Aheld for sale@ assets when consolidated on PNC=s balance sheet, resulted, among other things, in (a) a material overstatement of PNC’s earnings per share for the third quarter of 2001 by more than 21 percent; (b) a material understatement of PNC’s fourth quarter 2001 loss per share by 25 percent in press releases issued on Jan. 3, 2002 and Jan. 17, 2002; (c) material overstatements of 2001 earnings per share by 52 percent in a Jan. 17, 2002, press release; (d) material understatements of the amounts of PNC’s nonperforming loans and nonperforming assets; and (e) material overstatements of the amounts of reductions in loans held for sale and overstatements in amounts of securities available for sale. Following PNC’s restatement and consolidation of the PAGIC entities onto PNC’s balance sheet on Jan. 29, 2002, PNC’s stock price dropped by more than 9 percent.

In July 2002, PNC entered into separate written agreements concerning the PAGIC transactions with the Federal Reserve Bank of Cleveland and the Federal Reserve Board, the Office of the Comptroller of the Currency, and the United States Securities and Exchange Commission. Since July 2002, an investigation conducted by the FBI, as well as additional facts provided by the SEC and Federal Reserve, brought to light additional information. The agreements entered into today fully account for the behavior of PNC and PNCICLC in the PAGIC transactions. Those agreements also provide for restitution to victims, acknowledgment of responsibility by PNC for its behavior in the PAGIC transactions, and the continued cooperation of PNC and PNCICLC in the government’s ongoing investigation of others.

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